In the Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-99

FRANK AMATO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted of conspiring to obstruct commerce by extortion, physical violence and threats of physical violence, in violation of 18 U.S.C. 1951; he was sentenced to a term of ten years' imprisonment. The court of appeals affirmed (495 F. 2d 545; Pet. App. A).[1] Petitioner contends that there was not a sufficient nexus between the conspiracy and interstate commerce to bring the conspiracy within Section 1951, and that his conviction must be reversed because two of his co-defendants were acquitted by the jury, the trial court entered judgments of acquittal for three other co-defendants, and the court of appeals reversed the conviction of a sixth co-defendant.

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[1]Donald Lambert, a/k/a Louis Lamberti, a co-defendant whose conviction was affirmed by the court of appeals, has moved the Court to adopt Amato's petition as his own. This motion was attached to Amato's petition.

1. The conspiracy for which petitioner was convicted was directed against the owners of a restaurant. The restaurant's food and liquor supplies were purchased from suppliers engaged in interstate commerce. As a result of the conspiracy, the restaurant closed for a month and its profits declined. Eventually the owners were driven out of business. Petitioner acknowledges that under the authority of numerous court of appeals' decisions these facts show a sufficient effect upon commerce to sustain the conviction (Pet. 12-17). Petitioner nevertheless urges this Court to excise from the reach of the statute those "petty" extortions and robberies that he believes ought to be unaffected by federal law. The statute, however, condemns extortions and robberies which "in any way or degree" affect commerce; as petitioner concedes, it "extends to 'all * * * commerce over which the United States has jurisdiction' " (Pet. 9). When a statute which reaches a "class of activities" is within the reach of federal power because it affects commerce, "the courts have no power 'to excise, as trivial, individual instances' of the class." *Perez* v. *United States,* 402 U.S. 146, 154; see also *Maryland* v. *Wirtz,* 392 U.S. 183, 193. The operation of restaurants affects commerce, *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241, and thus Section 1951 properly proscribes the acts perpetrated in the conspiracy. The complaint about the law's alleged overreach should be addressed to Congress.

2. Participants in the conspiracy induced fear in the restaurant owners by threats and actual violence as part of an unsuccessful effort to extort money and employment and a successful effort to extort food, drink and services at the restaurant without payment. Petitioner and Lambert were, however, the only defendants shown at trial both to have made threats (and, in petitioner's case, participated in acts of

violence) on the one hand, and to have participated in the successful and unsuccessful extortionate attempts on the other hand. The other defendants were shown to have participated in only one branch of the conspiracy; one defendant, moreover, was dismissed not because of insufficient evidence but because of the government's inadvertent failure to comply with 18 U.S.C. 3500. Petitioner and Lambert participated in both branches of the conspiracy, and the evidence was sufficient to convict them.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1974.

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